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before Mr. Justice Hawkins and a special jury. Reported in the London Times, Aug. 11, Nov. 18, 19, 1896.) The material facts of the case were as follows. The defendant performed the operation of double ovariotomy on the plaintiff, a single woman at that time engaged to be married. Just before the operation Miss Beatty told the defendant that if both ovaries were found to be diseased he must remove neither. He replied, "You must leave that to me." The plaintiff denied hearing this remark. When she learned that Dr. Cullingworth had taken out both ovaries, she broke her engagement, and later brought the suit in question for malpractice and assault. The jury promptly found a verdict for the defendant. As a point of law, the question seems to have been inadequately considered, the charge of Mr. Justice Hawkins being little more than a direction to the jury that there was tacit consent to the operation.

It is difficult to sustain the verdict on the grounds taken. The facts, involving a direct prohibition, would seem to exclude the possibility of implying consent. But there is the better justification of public policy. When such connection between patient and surgeon is established that it is proper for the latter to act, he may lawfully, in the absence of consent, perform an operation which the necessity of the occasion seems to his careful judgment to require. Stephen, Digest of Criminal Law, 5th ed., p. 164, Art. 226. It is true that this does not cover a case where there is express prohibition by one rationally capable of deciding and having knowledge of the circumstances. But in this case, judging from the evident reason or cause of the instructions, the plaintiff did not have a sufficient knowledge of the facts. For the advanced stage of disease which made removal of the ovary appear necessary to a competent surgeon itself rendered the organ practically useless, as well as dangerous. Such, at least, appears to be the general medical opinion. After all is said, however, undoubtedly the defendant's wisest course would have been to refuse to operate in such a case, when hampered by hard and fast limitations. Certainly this is the course that would be adopted under similar conditions by the better class of surgeons in this country.

MORE UNFAIR COMPETITION CASES. — Never were unsuccessful traders more prone than at present to seek an easy path to prosperity by copying the business name of a more fortunate rival, or by "dressing up" their wares to look like his, in the hope of enticing away a part of his trade. The courts continue to be flooded with these so called "unfair competition" cases. Three decisions, illustrating different aspects of the subject, have been reported within a month. In *Buck's Stove & Range Co.* v. *Kiechle*, 76 Fed. Rep. 758, the defendant, it appeared, was making stoves with white enamel lining on the inside of the doors, in imitation of those long manufactured and sold by the plaintiff, with the fraudulent purpose and result of palming them off upon the trade and the public as the manufacture of the latter. He was promptly enjoined from continuing in that line of business. In *Fairbank Co.* v. *Bell Mfg. Co.*, reported in the New York Law Journal for December 14, the defendant discovered that the plaintiff's soap powder was finding an extensive market, and so determined to put up his own powder in a package of a very similar sort to that employed by plaintiff. He carried out his plan for some time with considerable success, but he too has now been enjoined. In *Mossler* v. *Jacobs*, reported in 7 Chicago Law Journal,

886, the "Six Little Tailors" procured an injunction estraining another firm from doing business under the name of "Six Big Tailors." And the end is not yet. Injured traders will be forced to seek the aid of the law until doomsday unless the code of business morality prevalent among a large class of our citizens becomes greatly changed. The cases on the subject are surprisingly numerous. The whole topic was treated at length, with full citation of authorities, in Mr. Mitchell's article in the last number of the REVIEW.

INTERSTATE COMMERCE AND THE POLICE POWER. — Two recent decisions of the United States Supreme Court raise again the vexed question of what are the limits of a State's power of legislation in matters touching interstate commerce. *Illinois Cent. R. R. Co.* v. *State of Illinois*, 163 U. S. 142, holds unconstitutional a local statute which compels all trains to stop at county seats. The court properly rests its opinion on the ground that such an enactment, though purporting to be a police regulation, was in reality a most unreasonable interference with interstate commerce, unnecessarily delaying fast mail trains, and oftentimes forcing them to go several miles out of their regular route. (See *Henderson* v. *Mayor of the City of New York*, 92 U. S. 259, 268.)

The other and more important case of *Hennington* v. *State of Georgia*, 163 U. S. 299, decides that a State law forbidding the running of freight trains on Sunday is valid, although its effect is to prevent interstate trains from passing through the State on that day. The decision was not a unanimous one. But this was hardly to be expected in view of the previous divisions of the same court on similar questions. *Bowman* v. *Chicago & Northwestern Ry. Co.*, 125 U. S. 465; *Leisy* v. *Hardin*, 135 U. S. 100; *Plumley* v. *Commonwealth of Massachusetts*, 155 U. S. 461. And the difference of opinion existing upon the precise question decided in *Hennington* v. *State of Georgia* is well illustrated by the fact that, in the only two instances in which this exact point has hitherto come before the courts, the decisions have been squarely opposed to each other. *State* v. *R. R. Co.*, 24 W. Va. 783; *Norfolk & Western R. R. Co.* v. *Commonwealth*, 88 Va. 95.

The *ratio decidendi* advanced in the principal case is, that the Sunday law was a legitimate exercise of the State's acknowledged power to protect the health and morals of its own citizens, and that it affected interstate commerce only incidentally. In determining the extent of a State's authority in matters which concern the commerce of other States, it seems to be generally admitted that, if Congress has passed laws on the same subject, these are superior to any State statute. Cooley, Const. Lim., 6th ed., 722, 723. But the point of difficulty is where, as in *Hennington* v. *State of Georgia*, and as is generally the fact, Congress has been silent. How far can the State then go in enacting such laws as relate to foreign or interstate commerce? Two tests by which to answer this question have been suggested. The first makes the intention of the State legislature the final criterion. It says that, if the object of the legislature is simply to promote the physical or moral welfare of the local community, then no matter what the real consequence upon commerce may be, the law is merely a police regulation and therefore valid. See article in 1 HARVARD LAW REVIEW, 159. This theory, however, in the light of recent decisions, can hardly be said to have been